(19,036.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 385.

C. P. COOK AND ED. PLUNKETT, PLAINTIFFS IN ERROR,

vs.

THE COUNTY OF MARSHALL, STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 In the Supreme Court of Iowa, October Term, A. D. 1901.

C. P. Cook and Ed Plunkett, Appellants,
vs.
Marshall County, Appellee.

Appeal from Marshall district court, Hon. G. W. Burnham, judge.

Dunshee & Dorn, attorneys for appellants.
J. Parker, of counsel.
Hon. Henry Stone, county att'y, for appellee.

Appellants' Abstract of Record.

On the 23d day of January, 1899, the appellants, after due notice, filed in the office of the auditor of Marshall county a duly verified

Petition

in words and figures following, to wit:

"To the honorable board of supervisors, Marshall county, Iowa:

Your petitioners hereby represent to your honorable body
2 that the undersigned C. P. Cook is engaged in business in the room known as No. 508 S. 3d Ave., in the city of Marshalltown, Iowa, as a dealer in tobacco, cigars, cigarettes, and like merchandise. That the undersigned Ed. Plunkett is the owner of the building in which said business is being carried on. That heretofore, to-wit, on the 10th day of December, 1898, W. B. Elliott, assessor of the city of Marshalltown, Marshall county, Iowa, in accordance with the provisions of the statutes of Iowa relative to the sale of cigarettes returned to the county auditor the names of the undersigned as persons who have been engaged in carrying on business in cigarettes and maintaining a place where cigarettes are sold in violation of law. That the county auditor has certified the names of the undersigned to the county treasurer as persons who are liable to the mulct tax by virtue of the provisions of the law of the State relative to the sale of cigarettes and the county treasurer has entered the names of the undersigned upon his books as liable to the quarterly installment of the mulct tax and to make the same a lien on the premises in question which are more fully described as follows, to-wit:

Lot 9, block 2, Ausrus addition.

That as petitioners are advised and believe they are not and neither of them is liable to said mulct tax provided in said statute and for the following reasons and on the following grounds, to-wit:

The said C. P. Cook as occupant, has not been since Sept. 30, 1898, engaged in the business of selling, giving away, bartering, or ex-

changing any cigarettes or cigarette paper except cigarettes bought by him from the American Tobacco Company, a corporation of the State of New Jersey having no place of business within the State of Iowa:

3 That said C. P. Cook has not at any time since said 30th day of September sold, given away, bartered, or exchanged any cigarettes or cigarette paper except those so bought from said American Tobacco Company as aforesaid and by said American Tobacco Company shipped to said C. P. Cook from beyond the limits of the State of Iowa; and the only sales made by said C. P. Cook have been of cigarettes in the original packages delivered by said American Tobacco Company to a common carrier without the State of Iowa and delivered by said common carrier to said C. P. Cook in the State of Iowa:

That because said C. P. Cook has not sold, given away, bartered nor exchanged any of the articles mentioned in said statute, it being section 5007 of the Code of 1897 of Iowa, except such as were sold by him in their original packages as aforesaid, petitioners are advised and believe that said statute section 5007 is as to such sales an attempted interference with and burden on interstate commerce and is therefore in contravention of that clause of the Constitution of the United States which gives to Congress the exclusive right to control inter-state commerce, and is void.

That the premises described above have not been used for the sale of any articles affected by said section 5007 of the Code of 1897 except for the sale of cigarettes as above described.

That the only cigarettes that have been sold by said C. P. Cook on said premises as aforesaid since September 30th, 1898, have purported to have come to him from the American Tobacco Company at St. Louis, in the State of Missouri, and have come to him in the identical package in which said C. P. Cook sold them without any box, bale, wrapping or covering of any kind. That each of said packages is a complete package of pasteboard

4 with the revenue stamp of the United States so pasted across at the end that the stamp would have to be destroyed before the contents of the package could be removed and complying in every respect with the provisions of the United States revenue law for the packing, shipment and sale of cigarettes. Wherefore, the said undersigned respectfully pray that the said tax may be remitted and held for naught."

C. P. COOK.

(Duly verified.)

That thereafter, on the 31st day of January, 1899, appellants filed in the office of the auditor of Marshall county, in support of said petition the following

Affidavit,

to-wit:

"STATE OF MISSOURI, } ss:
City of St. Louis, }

"Personally appeared before me, Joseph Lathrop, a notary public in and for the city of St. Louis, and State of Missouri, Thomas Donellan, who being duly sworn deposeth and saith:

I am an employee of the American Tobacco Company, at its factory and place of business at the corner of 16th and Walnut streets in the city of St. Louis. I am engaged in the packing for shipment of smoking tobacco and in attending to the shipment of cigarettes from this point; I have been so employed since May, 1898. On behalf of the American Tobacco Company and by direction of my superior, I have shipped cigarettes to C. P. Cook at Marshalltown, Iowa, from time to time since the 1st day of October, 1898. The packages shipped were each of paste board boxes containing — Sweet Caporal cigarettes; these paste board boxes were all in accordance with the internal revenue law regulating the packing, shipping, and sale of cigarettes; each of the packages being sealed by the internal revenue stamp so that such stamp would have to be destroyed before the package could be opened or its contents exposed; these packages were shipped to C. P. Cook, absolutely loose, or at least neither the American Tobacco Company, nor myself or any one of its other employees for it furnished any box, bale, bag, wrapping or other covering for these packages nor in any way attached them together. These packages were not separately addressed nor were any of them addressed but at the time they were delivered to the driver of the U. S. Express Co., which express company was the common carrier to whom the delivery was made, the said driver took a duplicate of the receipts he had given. These receipts showed the number of packages and the name of the person to whom they were to be sent and from its duplicate receipts I suppose the express Co. had notice of the number to be delivered and the name of the consignee and his address. I know that no cigarettes have been shipped from this place to said C. P. Cook, at Marshalltown, Iowa, since the 1st day of October, 1898, except cigarettes which have been shipped in the manner above outlined.

THOMAS DONNELAN."

"Subscribed and sworn to before me by the said Thomas Donellan this 27th day of January, 1899.

JOSEPH LATHROP,
[SEAL.] *Notary Public, City of St. Louis, Mo.*

My term expires July 11th, 1901."

That thereafter on the 3rd day of April, 1899, the said petition came on in regular order to be heard before the board of supervisors at a regular session and the board of supervisors having heard the evidence refused to grant the petition.

Thereafter and within due time, an appeal was perfected by the appellants from the decision of the board of supervisors to the district court of Marshall county, Iowa, and the foregoing record was duly certified by the county auditor as by law required to the office of the clerk of the district court.

Thereafter and on the 1st. day of April, 1901, appellees filed their

Demurrer

as follows, to-wit:

Come now the Board of Supervisors of Marshall County, Iowa, and demur to the petition of C. P. Cook and Ed. Plunkett and the said amendment thereto for the reason that the facts therein stated do not entitle the petitioners to the relief asked or to any relief.

Thereafter and on the 26th. day of February, 1901, appellants filed in the office of the clerk of the district court of Marshall county, Iowa, the following

Amendment to Petition.

"Come now the petitioners and for amendment to their petition show to the court that section 5007 of the Code of Iowa, being the law under which the said taxing officers pretend to be acting, is a portion of title XXIV of the Code, which portion of the Code was enacted under the following title, to-wit: "An act to revise, amend and codify statutes in relation to crimes and punishments;" that said section 5007 of the Code of Iowa never had any other enactment than under said title; that the subject matter of said sections is not included in the object as set out in said title, but said section has to do with the assessment, levy and collection of taxes
7 and special assessments; and is not in relation to crimes and punishments; that therefore, as plaintiffs are advised and verily believe, said section of said article provides:

'SEC. 29. Every act shall embrace but one subject and the matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.'

That as plaintiffs are further advised and verily believe, on account of said invalidity of said statute as aforesaid, the said pretended assessments and levies and said tax are wholly void and unenforceable.

Wherefore, your petitioners pray that said proceedings of the taxing officers of said county and its board of supervisors in refusing to

grant the prayer of petitioners be and of no effect; that the judgment of said board of supervisors in refusing to grant the praying of petitioners be reversed and set aside; that the said assessments be cancelled and annulled, and for judgment for costs and for such other and further relief as in the premises may seem equitable."

(Duly verified.)

Thereafter and on the 4th. day of April, 1901, the appellants filed another

Amendment to Petition

as follows, to-wit:

"Come now the petitioners and for further amendment to their petition (such further amendment having order of court sustaining it) show to the court that section 5007 of the Code of Iowa, being the law under which the taxing officers are acting, in its pro-
8 vision that its provisions shall not apply to the sales of jobbers and wholesalers in doing an inter-state business with customers outside of the State, is in violation of the fourteenth amendment of the Constitution of the United States in that it denies to your petitioners the equal protection of the laws and your petitioner is a person within the jurisdiction of Iowa; and in that said provision is in violation of the sixth section of article 1 of the constitution of Iowa which provides that all laws of a general nature shall have a uniform operation.

That as petitioner is advised the said law is therefore invalid and said pretended assessments and levies and said tax are wholly void and unenforceable."

(Duly verified.)

On the 4th. day of April, 1901, the cause was tried at the court house in Marshalltown, Iowa, before Honorable G. W. Burnham, presiding judge, on the defendants' demurrer to the petition and amendments thereto and the following proceedings were had, done and entered of record, to-wit: "Now, to-wit, April 4th., 1901, this cause coming on for hearing to the court, plaintiff has leave of court to file an amendment to his petition. Defendants' demurrer now on file to apply to the amendment."

Thereafter said demurrer was sustained and the following proceedings were had, done and entered of record; "Now, to-wit, June 7th., 1901, this cause coming on for judgment of the court on the demurrer of defendant to plaintiff's petition and the amendments thereto, sustained. To which ruling of the court plaintiffs except, plaintiff having elected to stand upon his petition, the petition is dismissed and judgment entered against the plaintiff for costs. To which judgment of the court the plaintiff excepts. The as-
9 sessment of the tax against plaintiff's property confirmed. To which plaintiff excepts."

On the — day of June, 1901, the appellants perfected an ap-

peal to the supreme court of the State of Iowa by serving upon the appellees and the clerk of the district court of Marshall county, a notice of appeal and filing a supersedeas bond with sureties approved by the clerk of the district court, and secured to the clerk fees for transcript.

The foregoing abstract is full, true and correct and contains all the pleadings in said action, all the evidence offered and received, all the agreements, stipulations and admissions of the parties and everything which is of record in said cause and all matters referred to in said abstract are of record in said court and cause.

We hereby certify that the cost of printing the foregoing abstract is $—.

DUNSHEE & DORN,
Attorneys for Appel-ants.
J. PARKER, *Of Counsel.*

10 (Supreme Court of Iowa, Feb. 2, 1903.)

COOK ET AL.
v.
MARSHALL COUNTY.

Appeal from district court, Marshall county, G. W. Bur-ham, judge.

The opinion states the case. Affirmed.

Dunshee & Dorn (J. Parker, of counsel) for appellants. Henry Stone for appellee.

WEAVER, *J.:*

The appellant Cook is a dealer in tobacco, cigars, and cigarettes, carrying on his business in a building owned by Plunkett, the other appellant, in the city of Marshalltown. A mulct tax having been assessed against Cook under the provisions of section 5007 of the Code, appellants petitioned the board of supervisors to remit and cancel such tax on the ground that no cigarettes had ever been kept, sold, or given away by Cook except in the original packages made by the manufacturer in another State, and in that form shipped directly to him in this State, and that, therefore, the section of the code referred to as applied to such sales is in violation of the Constitution of the United States, which reserves to Congress the right and power to regulate interstate commerce. This petition was supported by affidavit of an employé of the shipper at St. Louis, in the State of Missouri, that the cigarettes sold and shipped to Cook were done up in pasteboard boxes containing 10 cigarettes each (the printed record leaves a blank for the number in each box, but counsel for appellants state the number to be 10, and we will so consider it.) The affidavit further states that the packages were separately sealed and stamped with a revenue stamp, and adds that: "These packages were shipped to C. P. Cook absolutely loose, or at least

neither the American Tobacco Company nor myself or any one of its other employés for it furnished any box, bale, wrapping, or other covering for these packages, nor in any way attached them together. These packages were not separately addressed, nor were any of them addressed, but at the time they were delivered to the driver of the U. S. Express Co., which express company was the common carrier to whom the delivery was made, the said driver took a duplicate of the receipts he had given.

11 These receipts showed the number of packages and the name of the person to whom they were to be sent, and from its duplicate receipts I suppose the express company had notice of the number to be delivered and the name of the consignee and his address." This petition being refused, an appeal was taken to the district court, where an amendment was filed, alleging that the statute providing for the mulct tax is invalid, because the subject-matter of said section 5007 is not expressed or indicated in the title to the act in which it is found, as provided in the constitution of this State, and because it discriminates in favor of jobbers and wholesalers doing an interstate business. A demurrer to the amended petition, as stating no ground or fact entitling petitioners to the relief demanded, having been sustained, and judgment entered against them for costs, the petitioners appeal.

1. We first consider whether the petitioners show themselves entitled to the protection afforded by the interstate commerce clause of the Federal Constitution. It is asserted that the traffic in which Cook was engaged was the receiving and selling of cigarettes in the original packages as shipped from the manufacturer in another State, and is therefore lawful under the rule applied in Leisy *v.* Hardin 135 U. S. 100, and other cases of the same general nature, decided by the Supreme Court of the United States. So far as this branch of the case is concerned the question is whether 10 cigarettes, put up, handled, shipped, and sold in the manner indicated by the petition, is such an "original package" as is meant by the authorities which the appellant relies upon. As an original proposition, addressed to common sense, aided by a conscience of average enlight-ment, and uncomplicated by precedent, there would seem to be no room for doubt that this question should be answered in the negative. It must be admitted, however, that authorities are not wanting affording the appellants some ground to believe that any scheme or device, no matter how transparent the fraud, is sufficient to baffle the power of a sovereign State so long as it bears

12 the magic legend "original package." This theory is founded upon what has been supposed to be the holding of the court of last resort in the cases already referred to; but, as we view it, those decisions do not justify the deductions made. The term "original package" is not to be found in the Constitution, and has come into use simply as a convenient term or expression for one of the incidents ordinarily inseparable from interstate commerce. The term "imports" or "foreign commerce," or "interstate commerce" always implies the idea of goods, wares, or merchandise manufact-

ured, produced, or prepared in one jurisdiction, and carried into another for the purpose of sale. There can be no such commerce without transportation or carriage. For convenience and safety in such transportation, most articles of commerce being shipped to an importer or buyer are combined into packages, encased in boxes or other wrapping, and directed to the proper consignee. In this form they do not ordinarily enter into the retail or general trade of the community, and the fact that the package is unbroken is an indication that the goods have not yet lost their distinctive character as imports, or become mingled with the mass of property subject solely to the jurisdiction of local authority. The recognition of this feature by Chief Justice Marshall in Brown *v.* Maryland, 12 Wheaton 419, is the foundation on which all subsequent "original package" decisions in the various courts of the land are sought to be justified. In this, as in some other notable instances, the principle then announced has been so distorted and wrested from its original simple meaning, that, if the great jurist were permitted to return to the scene of his historic labors, he would doubtless hesitate long before acknowledging the legitimacy of the descent of the modern doctrine. It should not be overlooked that the pronounc-ment of Chief Justice Marshall upon which such reliance is placed was made in reference to foreign commerce only, and that the words so often quoted were employed in discussing the constitutional prohibition of duties and imposts by State authorities, and did not involve any consideration of interstate commerce. Wood-
13 ruff *vs.* Parham, 8 Wall. 123. This distinction is noted and emphasised in the majority opinion in the late case of Austin *vs.* Tennessee, 179 U. S. 343, hereinafter more particularly referred to. The term "original package," as employed in law, admits of no precise definition applicable to all cases. Generally, it is said to be a parcel, bundle, bale, box or case made up of or "packed" with some commodity with a view to its safety and convenient handling in transportation. Keith *v.* State, 91 Ala. 2, State *v.* Board 46 La. 146, Austin *v.* State 101 Tenn. 563, Com. *vs.* Schollenberger, 156 Pa. St. 201, It does not necessarily mean that goods shall be inclosed in a tight or sealed receptacle. Cone *v.* McGregor 104, Iowa, 465, State *v.* Chapman, S. Dak. 114, It relates wholly to goods as prepared for transportation, and has no necessary reference whatever to the package originally prepared or put up by the manufacturer. Indeed, the idea of an original package may well be made to cover certain forms of property which do not ordinarily admit of being "packed" or encased in any other manner than in the car or vessel in which they are transported. Such, for instance as steel, beams, threshing machines, and other bulky articles. Whether, in such cases, the unit or package for the purposes of interstate commerce is the car load, or cargo, or the entire consignment, or the individual articles of which the consignment is composed, is unnecessary for us to consider. Fortunately, as regards the very class of goods now in controversy we are not left without a controlling precedent.

Austin *vs.* Tennessee *supra*, recently decided by the Supreme Court of the United States, upholds the constitutionality of a statute of Tennessee prohibiting the sale of cigarettes in that State. There as here, the nonresident manufacturer and the resident agent or dealer, aided by a superservic-able common carrier, undertook
14 to convert the interstate commerce privilege afforded by the Federal Constitution into a shield behind which to violate the law of the State with impunity. The plan adopted may be explained as follows: To conform to the internal revenue law of the United States, the manufacturers put the cigarette into small pasteboard boxes of 10 each. These boxes are about 3 inches in length and 1½ inches in width, a convenient size for the vest pocket of the schoolboy or man addicted to the use of tobacco in that form. In filling an order for these goods from a State where the traffic is unlawful, the seller, instead of packing the requisite dozens or hundreds or thousands of boxes in a larger box or package, as would be done in legitimate commercial transactions generally, placed the small boxes in a loose pile upon the floor of his warehouse, and notified the carrier, who came, gathered up the consignment in a basket, and put it in course of transportation to the consignee. By this device it was claimed that each box of cigarettes was to be considered an original package, which the importer might lawfully receive, hold, and sell without let or hindrance by the State authorities. The adoption of this doctrine would, of course, prove absolutely destructive of the right of the State to place any ban whatever upon the sale of this class of goods. The cause of good government and good morals is to be congratulated, however, upon the fact that a majority of the court refused to allow the last vestige of the police power of the State for the protection of its people to be thus obliterated. The opinion says: "The real question in this case is whether the size of the package in which the importation is actually made is to govern, *or the size of the package in which bona fide transactions are carried on between the manufacturer and the wholesale dealer residing in different States.* We hold to the latter view." The words we have italicized appear to afford the only proper or efficient test of this troublesome question as to what is an original package for the purposes of interstate commerce. Even this definition is capable of being abused at times to the detriment of the interests of the States, but in a much smaller degree than any yet attempted. The further discussion by the court is so lucid and convincing in
15 statement, and so applicable to the case at bar, we further quote: "The whole theory of the exemption of the original package from the operation of State laws is based upon the idea that the property is imported in the ordinary form in which from time immemorial foreign goods have been brought into the country. These have gone at once into the hands of the wholesale dealers, who have been in the habit of breaking the packages and distributing their contents among the several retail dealers throughout the State. It was with reference to this method of doing business that the doctrine of the exemption of the original package grew up. But

taking the words 'original package' in their literal sense, a number of so-called 'original package' manufactories have been started through the country, whose business it is to manufacture goods for the express purpose of sending their products in-to other States in minute packages, that they may at once go into the hands of the retail dealers and consumers. and thus bid defiance to the laws of the State against their importation and sale. In all the cases which have heretofore arisen in this court the packages were of such size as to exclude the idea that they were to go directly into the hands of the consumer, or be used to evade the police regulations of the State with regard to the particular article. No doubt the fact that cigarettes are actually imported in a certain package is strong evidence that they are original packages within the meaning of the law, but this presumption attaches only when the importation is made in the usual manner prevalent among honest dealers, and in a *bona fide* package of a particular size. Without undertaking to determine what is the proper size of an original package in each case, evidently the doctrine has no application where the manufacturer puts up the package with the express intent of evading the laws of another State, and is enabled to carry out his purpose by the facile agency of an express company and the connivance of his consignee. This court had repeatedly held that, so far from lending its authority to frauds upon the sanitary laws of the several States, we are bound to respect such laws, and to aid in their enforcement, so far as can be done without infringing upon the constitutional rights of the parties. The conse-
16 quences of our adoption of defendant's contention would be far-reaching and disastrous. For the purpose of aiding a manufacturer in evading the laws of a sister State, we should be compelled to recognize anything as an original package of beer from a hogshead to a vial; anything as a package of cigarettes from an importer's case to a single paper box of ten, or even a single cigarette, if imported separately and loosely; anything from a bale of merchandise to a single ribbon, provided only the dealer sees fit to purchase his stock outside of the State, and import it in minute quantities. There could hardly be stronger evidence of fraud than is shown by the facts of this case. * * * Now, the result of defendant's argument in this case is that citizens of Tennessee may, under the commerce clause of the Constitution of the United States, bring into that State from other States cigarettes in unlimited quantities, and sell them despite the will of Tennessee as expressed in its legislation. In other words, it is decided that the commerce clause of the Constitution, by its own force, without any legislation by Congress, overrides the action of the State in a matter confessedly involving, in the judgment of its legislature, the health of its people. We can not accept this view. The doctrine that the silence of Congress as to what property may be of right carried from one State to another means that every article of commerce may be carried into one State from another, and there sold, ought not to be extended so as to embrace articles which may not un-

reasonably be deemed injurious in their use to the health of the people. If this be not so it follows that the reserve power of the State to protect the health of its people by reasonable regulations has application only in respect of articles manufactured within its own limits, and that an open door exists for the introduction into the State against its will of all kinds of property which may be fairly regarded as injurious in their use to health." To the usual effort to bring this kind of traffic within the principle of Brown *v.* Maryland, the court quotes the language of Chief Justice Marshall, and adds: "This sentence contains in a nutshell the whole doctrine upon the subject of original
17 packages upon which so formidable a structure has been attempted to be erected in subsequent cases. Whether the decision would have been the same if the original packages in that case, instead of being bales of dry goods, or hogsheads, barrels, or tierces of liquor, had been so minute in size as to permit their sale directly to consumers, may admit of considerable doubt. Obviously, the doctrine of the case is directly applicable only to those large packages in which from time immemorial it has been customary to import goods from foreign countries. It is safe to assume it did not occur to the Chief Justice that by a skillful alteration of the size of the packages the decision might be used to force upon a reluctant people the use of articles denounced as noxious by the legislatures of the several States."

The scheme by which the tobacco company attempts to circumvent the laws of the State is appropriately denounced in the opinion as "a discreditable subterfuge, to which this court ought not to lend its countenance." The only point upon which counsel attempts to distinguish between the Austin case and the case at bar is in the fact that in the former it appears affirmatively that the express company made use of a basket in removing the loose pile of small pasteboard boxes from the floor of the company's warehouse, while in the latter no mention is made of the basket. The petition and affidavit, which constitutes the showing here made, are drawn with much carefulness and skill to make it clear that "neither the American Tobacco Company nor any of its employés furnished any box, bale, bag, wrapping, or any covering for these packages, nor in any way attached them together," and that in this condition, without any mark or address upon them, they were delivered to the express company.

The care and precision with which we are told what the tobacco company did not do in making the shipment is no less conspicuous than the omission to tell what its agent, the express company, did do in that regard. We think, however, it indicates no such material
18 variance in the facts of the two cases as to effect the application of the rule. Conceding that the tobacco company scrupulously refrained from doing more than counting and pointing out the loose packages to the express company with directions to carry the same to the buyer in Marshalltown, yet we know, as a matter of common observation and immemorial usage, that this is not

the manner "in which *bona fide* transactions are carried on between the manufacturer and wholesale dealer residing in different States," and is, therefore, not entitled to claim the exemptions attaching to interstate commerce. Still further we may rightfully assume that the express company, in receiving and shipping these little boxes, did it in a rational manner, not by handling or carrying the boxes as ants carry sand, one grain at a time, but by gathering them, if not in baskets in receptacles of some suitable and convenient kind; and in such case, under the doctrine of McGregor *v.* Cone, *supra*, the receptacle so used would be the original package, if indeed, there be anything in the transaction entitled to that appellation. The extreme and unreasonable extension of the principle affirmed in Brown *v.* Maryland has been the fruitful source of much annoyance and embarrassment in many of the States of the Union. And it is a striking, but just, commentary upon the perversion of the principle embodied in that decision, to note that practically the only beneficiaries of the modern doctrine of the sanctity of original packages in interstate commerce are the whisky seller, the cigarette manufacturer, and the dealer in bogus butter,—a trinity which finds it profitable to force its wares upon States whose people, speaking through their constituted authorities, seek to exclude them as injurious to public health and morals. The demoralization thus resulting upon a denial of the right of the State to protect the lives, health, and morals of its people is not overstated by Williams, J., in Com. *v.* Schollenberger, *supra*, decided by the supreme court of Pennsylvania. Speaking of the claim there made that certain sales of oleomargarine in violation of a local statute were privileged, as being interstate commerce, he says: "Law-abiding citizens will not embark in a business which is forbidden by the laws of the State in which they live. Timid men
19 are afraid to do so. This kind of operation is left, therefore, to those who have no respect for law, no interest in the public welfare, and no fear of public opinion. When such men deliberately determine to put money in their pockets by engaging in a business which the State has declared to be injurious to the public morals, the public health, or the public peace, and has therefore, forbidden altogether, or placed under strict police regulations, they are morally certain to seek immunity for themselves and their unlawful business be immediate flight to the sanctuary of the national Constitution, and there laying hold on the horns of the altar of interstate commerce. The road to this refuge of lawbreakers is well beaten. There are signboards at every crossing on the route, and the intermediate stations for profitable rest wear conspicuous signs of invitation. The travelers over it are generally foreigners to the State whose laws they trample upon, and include a motley assortment of traders. Beginning with the peripatetic swindlers whose worthless wares are transported in tin trunks, which they carry in their hands, and who hunt their victims in secluded villages and along country roads, with an instinct that rarely fails, and running up or down the scale of lawbreakers to the men whose commercial

operations extend to the sale of oleomargarine by the pound, and of intoxicating drinks by the pint, there is no man in the procession who is not a conscious and deliberate lawbreaker, and who does not set his possible profits from a forbidden business above his duty to society or the State that protects him. These men seek to pervert a rule of law that has a wide and beneficial field of operation. They claim to be engaged in interstate commerce, and to be entitled to the protection of the General Government, and against the police laws of the individual States, for that reason. * * * The mischief done and attempted in the manner under the guise of interstate commerce is so great, so open, and so difficult to suppress or punish that in many States besides this it has become a matter of general and sincere regret that the interstate commerce law was ever held applicable to trade in any article recognized throughout the civ-
20 ilized world as a proper subject for police regulation and control." The decision of the Supreme Court of the United States which reversed the holding of the State court in these oleomargarine cases—Schollenberger *v.* State, 171 U. S. 1,—turns principally upon the effect of a special verdict of the jury and serves neither to dull nor turn aside the point of the quotation we have made. The duty of the courts to apply every available and legitimate remedy for the evils thus graphically set forth is plain. The case made by the appellants to bring their business within the privileges of interstate commerce is wholly without merit, and the holding of the trial court in respect thereto is clearly correct.

2. It is urged by appellants with much earnestness that the statute under which the disputed tax was levied is void, because it does not conform to section 29 of article 3 of the constitution of this State. The provision to which reference is made reads as follows: "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." Section 5007 of the Code, to which objection is here raised is found in title 24, "Of crimes and their punishment," and sub-title (chapter 11) "Of offenses against public policy." The general title of the bill as it passed the legislature is "An act to revise, amend and codify the statutes in relation to crimes and their punishment." Section 5006 in chapter 11 prohibits the keeping for sale and selling and giving away of cigarettes under a penalty of fine and imprisonment. Section 5007 provides that "there shall be assessed a tax of $300 per annum against every person, partnership or corporation and upon the real property within or whereon any cigarettes * * * are sold or given away or kept with intent to be sold or bartered or given away under any pretext whatever. The tax is to be assessed and collected after the matter of the mulct liquor tax, but is not a bar to a prosecution for the penalties provided in section 5006. Both sections exempt from their provisions "Jobbers and wholesalers doing an interstate business with persons outside of the State." The question arises whether section 5007 comes fairly within the
21 scope of the title. The end sought to be obtained by the constitutional provision invoked by the appellants "was to prevent

the union in the same act of incongruous matters and of objects having no connection, no relation. And with this it was designed to prevent surprise in legislation by having matters of one nature embraced in a bill whose title expressed another. State *v.* Davis Co. Judge, 2 Iowa, 281. This, it has ofter been held, does not require a construction forbidding the inclusion in one act of all matters germane to the main proposition or purpose sought to be affected, even though they are not specifically mentioned in the title. If there is a "unity of object" in the various provisions, and that general object is indicated by the title, then, no matter how multifarious the provisions of the act, it sufficiently complies with the constitution. Santo *v.* State, 2 Iowa, 208; Morford *v.* Unger, 8 Iowa, 85; Porter *v.* Thomson, 22 Iowa, 391. In this connection we may well note the development of this provision in our constitution, and the language in which it is framed. In the constitution of 1846 it appears in these words (article 3): "Sec. 26. Every law shall embrace but one object, which shall be expressed in the title." Seemingly to avoid the embarrassments which might arise from a narrow construction of the rule as thus expressed, the framers of the present constitution changed it to read: "Every act shall embrace but one subject *and matters properly connected therewith* which subject shall be expressed in the title." The added words which we have italicized are highly important, and clearly indicate the intention that the rule shall be liberally interpreted. It is the general policy of every State in the Union to collect and restate from time to time the whole body of its statute law in a complete and systematic form or code, and we think it has never been held by any court that this assembling under one head of various enactments tending to the same general object is not valid under the constitution. Any other conclusion would render valueless all efforts at codification. In Johnson *v.* Harrison, 47 Minn. 575, we
22 find the following clear and forceful discussion of the principle: "Any construction of this provision of the constitution that would interfere with the very commendable policy of incorporating the entire statutory law upon one general subject in a single act, instead of dividing it into a number of separate acts, would not only be contrary to its spirit, but also seriously embarrassing to honest legislation. All that is required is that the act should not include legislation so incongruous that is could not by any fair intendment be considered germane to the general subject. The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject, and not several. The connection or relationship of several matters such as will render them germane to one subject and to each other can be of various kinds; as, for example, of means to ends, of different subdivisions of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical. It is enough that the matters are connected with and related to a single subject in popular signification. * * * Neither

is the fact important that a law contains matters which might be and usually are contained in separate acts, or would be more logically classified as belonging to different subjects, provided only they are germane to the general subject of the act in which they are put. The legislature is not limited to the most logical or philosophical classification." Another court has said: "It is not intended to prohibit the uniting in one bill of any number of provisions having one general object fairly indicated by its title. The unity of the object must be sought in the end which the legislative act purposes to accomplish." State *v.* Town of Union, 33 N. J. Law, 351; Montclair Tp. *v.* Ramdell, 107 U. S. 147. "The constitution is obeyed if all the provisions relate to the one subject indicated in the title, and parts of it, or incident to it, or reasonably connected with it, or in
23 some sense auxiliary to the object in view." Ritchie *v.* People, 155 Ill. 98, Bobel *v.* Same, 173 Ill. 19. It is admissible to include in a statute "means which are reasonably adapted to secure the objects indicated by the title." Cohn *v.* People 149 Ill. 486, To the same general effect, see Cooley, Const. Lim. (4th ed.) 175–178; Lacey *v.* Palmer, 93 Va. 159, Ewing *v.* Hoblitzelle, 85 Mo. 64; Grover *vs.* Trustees, 45 N. Y. Law, 401; State *vs.* Silver, 9 Nev. 231; Fahey *v.* State, 27 Tex. App. 146, Van Brunt *v.* Town of Flatbush, 128 N. Y. 50 State *v.* Mines, 38 W. Va. 137,

Accepting the foregoing as announcing the correct rule of interpretation, we have next to inquire of the socalled "mulct tax" is in any sense germane to the general purpose of the act in which it is found. Bear in mind that this statute as a whole is an attempt to restate not only the law defining crimes and misdemeanors, but the remedies to be applied for suppressing and punishing the same. It certainly was competent for the legislature under the head so designate those acts which, in its wisdom, should be forbidden as against public policy, and to include therein the traffic in cigarettes. The authorities to this effect are too numerous and familiar to require citation. In codifying theses statutes the legislature found already upon the statute book the prohibition now carried into section 5006 (see Laws 26th Gen. Assem. c. 96) and in carrying it into the Code amended it by adding thereto section 5007, providing for the mulct. That it was intended as an aid in suppressing and punishing violations of the provisions of the preceding section seems too clear for controversy. While called a "tax" it is a "mulct" tax, and a mulct is a fine imposed for an offense, a penalty." See "mulct," And. Law Dict., Ebersole, Law Dict., Cent. Dict. It is not even a form of license by indirection, it contains no "bar clause" but, on the contrary, expressly provides that it may be exacted in addition to the penalties named in section 5006. The end sought by
24 both these sections is identical,—the suppression and prevention of the traffic in cigarettes. To use the language of the authorities to which we have referred, there is here a "unity of object," and the mulct is manifestly an auxiliary to the end sought to be accomplished. It is not wholly unlike those familiar enactments which provide for the punishment of a crime or misdemeanor,

and unite them with a provision for assessing further penalty or damages in a civil proceeding. For instance, section 4822 of the Code authorizes punishment for malicious trespass, and, in addition thereto, authorizes the owner to recover three times the amount of his actual damage from the trespasser in a civil proceeding. Section 4834 prescribes the penalty for larceny of logs and timber floating in the rivers of the State, and is followed by section 4835, which subjects any person thus offending, whether convicted thereof in a criminal proceeding or not, to pay the owner of the stolen property twice the value thereof. If section 4835 can properly be held germane to the general purpose indicated in section 4834 (and we think none will dispute it), we see no good reason for applying any different rule to the sections to be construed in the case before us. Other instances of like legislation will readily suggest themselves in which a "tax" or "mulct" or "penalty" is provided as an additional weapon in the hands of the State for enforcing obedience to its commands. It must be remembered that title 24 of the Code is no more than what it purports to be,—"An act to revise, amend and codify" statutes already existing. Those statutes, we must assume, were properly entitled; at least, no objection is raised thereto by appellants. Such being the case, if the title to the original act or acts is sufficient to embrace the matters covered by the provisions of the act amendatory thereof (and, as we have said, no objection of that nature is here raised), it is unnecessary to inquire whether the title to the amendatory act would of itself be sufficient. Morford *v.* Unger, 8 Iowa, 85; Brandon *v.* State, 16 Ind. 197; Yellow Pk. Co. *v.* Arnold, 46 Wis. 214; State *v.* Ranson, 73 Mo., 18; State *v.* Algood, 87 Tenn., 163; Com. *v.* Brown, 91 Va., 762; People *v.* Parvin (Cal.), 14 Pac. Rep., 783; Lankford *v.* Co. Com. (Md.), 20 Atl. Rep., 1017. It may be that in a matter of original legislation a proper observance of the constitution would require the separation into separate acts of matters which we hold it proper to combine in a single general measure of amendment, revision, or codification. But that phase of the question is not now before us, and we need not consider it. It is not improper, however, to observe that by the adoption of the Code of 1897 the entire body of the statutory law of this State, consisting of many hundred separate acts, was classified and combined under 26 titles. Each of these titles of necessity contains widely variant provisions, but all having more or less appropriate relation to the general topic to which such title is devoted. To adopt the strict doctrine for which appellants contend would unsettle the validity of a multitude of Code provisions, and open the door to legal chaos. True, even such an unfortunate result should not deter the court from accepting and announcing a rule which is clearly right, but it is a good and sufficient reason why we should pause and refuse to take a position attended with such grave consequences until its propriety and correctness are demonstrated beyond reasonable doubt. Moreover, it is a well-established principle, which this court has often applied, that it is a duty of the courts to give such a construc-

tion to an act, if possible, as will avoid the necessity of holding it void for unconstitutionality. State *v.* Weir, 2 Iowa, 282. It is a power which will not be resorted to unless the case be clear, decisive, and unavoidable. Santo *v.* State, *supra.* A late case decided by the supreme court of California—Lewis *v.* Dunne, 66 Pac. R.—holds that an act embodying numerous amendments to different sections of the Code, and repealing others, is unconstitutional, but the validity of acts of general revision and codification under general and comprehensive titles is supported by the great weight of authori-
26 ties. *Central of Georgia R'y Co. v. State,* 104 Ga., 831; Mathis *v.* State, 31 Fla., 291; McLane *vs.* Paschal, 8 Tex. Civ., 711; Larned *v.* Tierman, 111, 173; Marston *v.* Humes, 3 Wash. St., 267; City of Hannibal *v.* Marion Co., 69 Mo., 571. See also, the very exhaustive briefs of counsel and note to Lewis *vs.* Dunne, *supra,* 55 L. R. A., 833, where the case upon both sides are collated.

3. The further contention that the statute is unconstitutional because it is not uniform in its operation, and exempts certain persons from its observance, cannot be sustained. The reference made in the statute to jobbers and wholesale dealers doing business with customers outside of the State does not bear the construction which counsel put up on it. The evident purpose of the proviso is to avoid any interference with shipments made from such dealers in the State to p-ints outside of the State, and thus to escape, if possible, any objection to its validity based upon the exclusive control of Congress over interstate commerce. Whether it is effective for the purpose intended we need not consider, and the wisdom of its enactment is a question for the legislature alone. It operates alike upon all persons in like situation, and therefore is of uniform operation within the meaning of the constitution. Iowa R. L. Co. *v.* Soper, 39 Iowa, 112; Iowa R. L. Co. *v.* Schrader, 87 Iowa, 659. Christie *vs.* Life Ins. Co. 82 Iowa 360.

The judgment of the district court is affirmed.

27 In the Supreme Court of Iowa.

C. P. Cook and Ed Plunkett, Appellants,
vs.
Marshall County et al., Appellees. } Decree.

This cause came on to be heard at the October term 1902, upon the printed records and briefs of both parties and upon oral arguments, and the court took the matter under advisement and now this 1st day of June 1903 being one of the days of the May term, the court having considered the arguments and being fully advised in the premises, finds, that the equities are with the appellees; that the taxes levied by the officials of Marshall county under and by virtue of the provisions of section 5007 of the Code are valid, and the same are therefore now fully established, and given full force and effect as provided by law.

It is therefore ordered, adjudged and decreed that the decree of the court below be and it is *offered* as per opinion on file and that judgment be entered against appellants for costs which are by the clerk of this court taxed at the sum of $15.75. To which appellants except.

BISHOP,
Chief Justice.

[Endorsed:] Filed Jun- 26 1903 Jno. C. Crockett clerk supreme court.

28 In the Supreme Court of Iowa.

C. P. COOK and ED. PLUNKETT, Appellants,
vs.
MARSHALL COUNTY, Appellee.
} Petition for Writ of Error.

To the Hon. Charles A. Bishop, chief justice of the supreme court of Iowa:

Now come C. P. Cook and Ed. Plunkett the plaintiffs in error in the above entitled cause by their attorney and say that on the first day of June, 1903, the supreme court of Iowa being the highest court in the State of Iowa in which a decision in the above entitled cause could be had, entered a final decree herein in favor of Marshall County and against the plaintiffs in error in which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of the plaintiffs in error in that the validity of a certain statute of the State of Iowa constituting section 5007 of the Code of 1897, having been drawn in question by the plaintiffs in error on the ground that said statute is repugnant to division three (3) of section eight (8) of article I of the Constitution of the United States, the decision of this court was in favor of the validity of said statute and against the rights set up under the said clauses of the United States Constitution as aforesaid, and certain unjust penalties provided by said section 5007 of the Code of Iowa were imposed upon these plaintiffs in error.

29 Wherefore said plaintiffs in error, C. P. Cook and Ed. Plunkett pray that a writ of error may issue in this behalf from the Supreme Court of the United States for the correction of errors so complained of and that a transcript of the record, proceedings, and opinion and papers in this case duly authenticated may be sent to the said Supreme Court of the United States and that the said judgment and decree may be re-examined and reversed.

DUNSHEE & DORN,
Attorneys for Plaintiffs in Error.
JUNIUS PARKER, *Of Counsel.*

[Endorsed:] Filed Jun- 29, 1903. Jno. C. Crockett, clerk supreme court.

30 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of Iowa, at the May term 1903 thereof, at Des Moines, Iowa, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between C. P. Cook and Ed. Plunkett, appellants, and Marshall County and others appellees, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission, a manifest error hath happened to the great damage of the said C. P. Cook and Ed. Plunkett, appellants, as aforesaid, as by their complaint appears, we, being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings with all things concerning the same to the Supreme Court at Washington within thirty days from the date hereof, that, the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according
31 to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 17th day of June, in the year of our Lord one thousand nine hundred and three.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
Clerk U. S. Circuit Court, So. Dist. of Iowa.

STATE OF IOWA, *ss:*

Allowed by—
CHARLES A. BISHOP,
Chief Justice of the Supreme Court of Iowa.

Bond to be $250.

Filed June 29" 1902.

JNO. C. CROCKETT, *Clerk.*

[Endorsed:] Filed Jun- 29 1903 Jno. C. Crockett clerk supreme court.

32 In the Supreme Court of the United States.

C. P. COOK and ED. PLUNKETT, Appellants, vs. MARSHALL COUNTY, Appellee. } Writ of Error to the Supreme Court of Iowa. Assignment of Errors.

The appellants C. P. Cook and Ed. Plunkett come by their attorneys feeling themselves to be aggrieved by the findings and judgment of the supreme court of Iowa in the above entitled cause and assign errors thereto as follows:

I.

That the supreme court of Iowa erred in holding and adjudging that section 5007 of the Code of Iowa under which certain assessments of so called cigarette mulct tax were levied by the taxing officers of Marshall county, Iowa, against appellants, was not in so far as the acts of appellants, by reason of which said taxes were levied are concerned in conflict with section 8 of art. I of the Constitution of the United States, and in affirming the judgment of the district court of Marshall county, Iowa, by which judgment said assessments were established and confirmed.

II.

That the supreme court of Iowa erred in holding and adjudging that section 5007 of the Code of Iowa, under which certain assessments of so called cigarette mulct tax were levied by the taxing officers of Marshall county, Iowa, against appellants, was not in so far as the acts of appellants, by reason of which said taxes were levied, are concerned, in conflict with section 10 of art. I of the Constitution of the United States, and in affirming the judgment of the district court of Marshall county, Iowa, by which judgment said assessments were established and confirmed.

33 III.

That the said supreme court of Iowa erred in holding that the packages of cigarettes sold by C. P. Cook, plaintiff in error were not the original packages in which said cigarettes were imported, and that therefore the sales by said appellant were not an act of interstate commerce subject under sections 8 and 10 of art. I of the Constitution of the United States to congressional regulation only, and not to the regulation and control of any of the States.

IV.

That the supreme court of Iowa erred in holding that section 5007 of the Code of Iowa, being thelaw under which certain assessments of the so called cigarette mulct tax were levied against ap-

pellants by the taxing officers of Marshall county, Iowa, was not in violation of the fourteenth amendment to the Constitution of the United States in its provision that the provisions of said section 5007 shall not apply to the sales of jobbers and wholesalers in doing an interstate business with customers outside of the State of Iowa, in that it denies to appellants the equal protection of the laws, appellants being persons within the jurisdiction of the State of Iowa.

V.

That the supreme court of Iowa erred in holding that said pretended assessments and levies of so called cigarette mulct taxes made under and by virtue of the provisions of section 5007 of the Code of Iowa are valid and enforcible.

VI.

That the validity of the aforesaid statute, section 5007 of the Code of Iowa, having been drawn in question by appellants as applied to the acts for which the said so called taxes were levied against appellants, on the ground that said statute as applied constituted a regulation of interstate commerce and was therefore in contravention of the Constitution of the United States, the supreme
34 court of Iowa erred in that its decision was in favor of the validity of said statute as applied to the sales by appellant, C. P. Cook on the premises of the appellant, Ed. Plunkett, for which sales said pretended assessments were levied, and in holding and adjudging that the same was as so applied not in conflict with the said section of the Constitution of the United States.

VII.

That the validity of the aforesaid statute, section 5007 of the Code of Iowa having been drawn in question by the appellants as applied to the sales made by appellant, C. P. Cook on the real estate of the appellant, Ed. Plunkett, for which said pretended assessments were levied against appellants, on the ground that said statute so applied denies to appellants the equal protection of the laws, appellants being persons within the jurisdiction of the courts of the State of Iowa, and was therefore in contravention of the fourteenth amendment to the Constitution of the United States, the supreme court of Iowa erred in that its decision was in favor of the validity of said statute and in holding and adjudging that the same was and is not in conflict with the said fourteenth amendment to the Constitution of the United States, and that the pretended assessments levied thereunder are valid.

VIII.

And the said C. P. Cook and Ed. Plunkett, pray that the errors so complained of may be corrected and that the judgment of the supreme court of Iowa may be reversed, annulled, and altogether held

for nothing, and that the assessments of the said so called cigarette mulct taxes may be cancelled, set aside, and held for naught, and that plaintiff- in error be restored to all things which *he has* lost by occasion of the said erroneous judgment aforesaid.

JUNIUS PARKER,
DUNSHEE & DORN,
Attorneys for Appellants.

[Endorsed:] Filed Jul- 9 1903 Jno. C. Crockett clerk supreme court.

35 *Bond.*

Know all men by these presents: that we C. P. Cooke and Ed. Plunkett of Marshall county, Iowa, as principals, and John W. Howell of Polk county, Iowa, as surety, are held and firmly bound unto Marshall County in the full and just sum of $250.00 to be paid to the said Marshall County, its certain attorney or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 26th day of June, in the year of our Lord 1903.

Whereas lately at a supreme court of the State of Iowa in a suit pending in said court between C. P. Cooke and Ed. Plunkett as appellants, and Marshall County as appellees a judgment was rendered against the appellants establishing and confirming a certain so called mulct tax levied by the taxing officers of Marshall county, Iowa, and making the same a lien upon certain real estate in said Marshall county, Iowa, and the said C. P. Cooke and Ed. Plunkett having obtained a writ of error and filed a copy thereof in the clerk's office of the said county to reverse the judgment in the aforesaid suit, and a citation directed to the said Marshall County citing and admonishing it to be and appear at a Supreme Court of the United States at Washington within thirty days from the date thereof: Now the condition of the above obligations is such that if the said C. P. Cooke and Ed. Plunkett shall prosecute their writ of error to effect and answer all damages and costs if *he* fail to make *his* plea good then the above obligation to be void; else to remain in full force and effect.

C. P. COOK,
ED. PLUNKETT, *Principals,*
By F. S. DUNSHEE &
C. R. DORN, *Att'ys.*
J. W. HOWELL, *Surety.*

36 STATE OF IOWA, } ss:
Polk County, }

I, John W. Howell on oath depose and say that I am the surety above named; that I am worth more than $500.00 over and above my debts and exemptions, and have real property in the State of Iowa worth more than $500.00 outside of my homestead.

J. W. HOWELL.

Subscribed and sworn to before me and in my presence by the said John W. Howell this 29 day of June, 1903.

[Notarial Seal of F. S. Dunshee, Iowa.]

F. S. DUNSHEE,
Notary Public.

[Endorsed:] Filed Jun- 29 1903 Jno. C. Crockett clerk supreme court. Filed and approved this 29th day of June 1903 Jno. C. Crockett clerk supreme court of Iowa.

37 UNITED STATES OF AMERICA, ss:

To the County of Marshall, State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof pursuant to a writ of error in the clerk's office of the supreme court of Iowa, wherein C. P. Cook and Ed. Plunkett are plaintiffs in error and you are defendant in error, to show cause, if any, there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles A. Bishop, chief justice of the supreme court of Iowa this 24th day of June in the year of our Lord one thousand nine hundred and three.

CHARLES A. BISHOP,
Chief Justice of the Supreme Court of Iowa.

I acknowledge service of notice of the within and copy of the same has been left with me this 3d day of July, 1903.

F E. NORTHUP,
County Attorney of Marshall County.
F. E. NORTHUP,
Attorneys for Marshall County.

[Endorsed:] Filed Jul- 9, 1903 Jno. C. Crockett clerk supreme court.

38 In the Supreme Court of Iowa.

STATE OF IOWA, ss:

I, Jno. C. Crockett, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true an- correct transcript of the record opinion and final judgment in the case of C. P. Cook and Ed. Plunkett the plaintiff- in error, *vs.* Marshall County Iowa defendant in error, as full, true and complete as the same are of record and on file in my office.

I further certify that the writ of error, citation and supersedeas bond, with the order of approval to operate as a supersedeas endorsed thereon, are hereto attached in original form, and that true and correct copies thereof have been retained in my office, and this return is made in obedience to said writ of error.

In testimony whereof, witness my signature and the seal of said court at Des Moines, Iowa, this 9th day of July A. D. 1903.

Seal of the Supreme Court of Iowa.

JNO. C. CROCKETT,
Clerk Supreme Court.

Endorsed on cover: File No. 19,036. Iowa supreme court. Term No. 385. C. P. Cook and Ed. Plunkett, plaintiffs in error, *vs.* The County of Marshall, State of Iowa. Filed July 31st, 1903.